

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4589 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KIRAN @ KALA BHIKHA HARIJAN

Versus

DISTRICT MAGISTRATE

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Appearance:

MR YS LAKHANI for Petitioner

MR KC SHAH, A.G.P., for Respondents

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 13/09/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner - detenu Kiran Kala Bhikha Harijan has brought under challenge the detention order passed against him on 11th April, 1996 rendered by the respondent No.1 under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No.16 of 1985), hereinafter referred to as "the PASA

Act."

2. The grounds on which the impugned order of detention has been passed appear at Page : 16 to the petition. They inter alia indicate that the petitioner detenu by himself and with the aid of his associates has been carrying on criminal and unlawful activity of threatening and beating innocent people and causing hurt to them with deadly weapons leading to the Detaining Authority to come to the conclusion that the petitioner is a dangerous person within the meaning of Section 2(c) of the PASA Act. Following offences have been registered in Jetpur City Police Stations :

1. CR No. 117/95 U/ss.447, 504, 114, 506(2) and dt.23.9.1995 427 of I.P.C.
2. CR No. 152/95 U/ss. 302, 307, 392, 462, 34 & dt. 3.10.1995 114 I.P.C. read with Sections 37(1) & 135 of the Bombay Police Act.

3. It can thus be seen that the last of the aforesaid offences is stated to have occurred on 3.10.1995 and the petitioner is stated to have been enlarged on bail on 15th/16th November, 1995. It is no doubt true that the statements of six witnesses have been recorded, but they indicate the period of occurrence of incidents ranging from November, 1995 to March, 1996. The statements are general in nature and they are recorded on 15.11.95, 16.11.95, 20.11.95, 2.1.96, 1.4.96 and 2.4.96.

4. It is on the aforesaid incidents that the detaining Authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner.

5. I have heard the learned Advocate for the petitioner and the learned A.G.P. for the State. The petitioner has challenged the aforesaid order of detention on number of grounds, inter alia, on the ground of delay as can be seen from the grounds of detention as also from Para : 4(g) of the petition.

6. Although there is no affidavit in reply to the aforesaid ground of delay it has been submitted by Mr. K.C.Shah, learned A.G.P. that the delay has been explained by the fact that the last two statements have

been recorded in April 1996 and the order is passed in April 1996 and, therefore, it cannot be said that there is a gross delay and the delay cannot be said to have been explained. It is in the context of such facts that reliance has been placed on the decision of the Honourable Supreme Court in the case of P.N.Paturkar V/s. S. Rama Murti, reported in A.I.R. 1994 SC 656. There the reference was made to an earlier decision of the Apex Court in the case of T.A.Abul Rahman v. State of Kerala, (1989) 4 SCC 741 : (AIR 1990 SC 225). Following observations have been quoted :

"The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case."

In the case before the Supreme Court there was a delay of 5 months and 8 days from the date of registration of the last case and of more than 4 months from the submission of the proposal. The statements were obtained only after detenu became successful in getting bail in all the cases registered against him. As stated above in the present case there is sufficient delay so as to snap the live link between the prejudicial activity and the purpose of detention. It is under such circumstances that decision in P.N.Paturkar (Supra) would be applicable to the facts of the present case.

7. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed

directly on the strength in decision of P.N.Paturkar's case (supra), it is not necessary to deal with the other grounds. Hence, following order is passed :

The impugned order of detention is hereby quashed and set aside. The petitioner - detenu Kiran @ Kala Bhikha Harijan shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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